*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.17963 of 2000

%13-2-2006

Dr. S.Vijaya Rama Rao and another.

..PETITIONERS

Vs.

$ The Secunderabad Cantonment Board

Represented by its Executive Officer

Cantonment Board, Secunderabad.

..RESPONDENT

! COUNSEL FOR PETITIONERS: Sri V.Hariharan

^ COUNSEL FOR RESPONDENT: Sri Y.V.Ravi Prasad

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>HEAD NOTE:

?CASES REFERRED:

1. AIR 1973 Delhi 84

2. 1992 Crl.LJ 26

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.17963 OF 2000

DATED:13.2.2006

Between:

Dr.S.Vijaya Rama Rao and another

…Petitioners

And

The Secunderabad Cantonment Board

Represented by its Executive Officer

Cantonment Board, Secunderabad

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.17963 OF 2000

ORDER:

The petitioners claim to be owners of residential plots bearing Nos.26/1, 26/2 and 26/3 in GLR Survey No.625, Vighneswara Cooperative Housing Society, Sikh Road, Secunderabad, respectively. According to them the land forms part of approved layout of M/s.Vighneswara Cooperative Housing Society Limited (for short, the Society). The petitioners made an application on 18.7.1992 under Section 179 of the Cantonments Act 1924 (for short, the Act) informing the respondents their intention to construct residential houses and submitted plans with the application/notice. The respondent returned the same on 19.9.1992 on the ground that a Writ Petition, being W.P.No.18389 of 1989 filed by some of the members of the Society questioning the revised layout plan, is pending before the High Court. The petitioners alleged that they waited for a period of thirty days and having not received any rejection order proceeded with the construction under "deemed permission" in accordance with the building plan. They also alleged that they informed the respondent for the purpose of payment of property tax. In the meanwhile, some of the members of the society filed W.P.No.18389 of 1989 questioning the revised layout plan. The respondent issued notice under sub-section (1) of Section 185 dt.25.2.1993, directing the first petition and his vendor to demolish the unauthorized constructions. The petitioners however were not aware of the same, as they were under the impression that they are entitled to construct building under deemed permission. Finally, on 31.8.2000 the respondent issued notice under Section 256 of the Act directing demolition of the residential building, aggrieved by which present Writ Petition is filed.

The respondent filed a counter affidavit. It is stated that after receiving building application for sanction under Section 179 of the Act, the respondent returned the same informing that a Court case is pending with regard to layout. The petitioner thereafter never represented the plan, but started construction. Therefore, on 25.2.1993 a notice under Section 185(1) of the Act was issued to remove the unauthorized construction on their own. Instead of complying with the same, the petitioners illegally made construction and completed the work of construction of ground floor, first and second floors. The same was detected on 22.10.1992 and therefore a statutory notice was issued under Section 185(1) of the Act. It is further

alleged that no such application was made with regard to plot No.26/3, but application was made only in respect of plot Nos.26/1 and 26/2. In spite of the same, petitioners did not comply with the notice and therefore a final notice under Section 256 of the Act was issued for demolition of the un-authorized construction.

The learned counsel for the petitioners submits that the respondent never rejected building plan and therefore the petitioners are entitled to proceed with the construction under Section 181(6) of the Act. Secondly, he would urge that in the absence of notice under Section 185(1) of the Act, notice under Section 256 of the Act cannot be issued. The learned Counsel also submits that the action of the respondent Cantonment Board in ordering demolition after expiry of a period of twelve months after completion of the building is illegal.

Learned Standing Counsel for the Cantonment Board submits that the plan submitted by the petitioners was duly returned on 19.9.1992, but the same was not represented. Therefore, petitioners cannot take advantage of Section 181(6) of the Act and make illegal construction under deemed permission, which is not available to the petitioners. Secondly he would submit that after noticing illegal construction a notice was issued on 31.8.2000 under Section 185(1) of the Act, that petitioners also submitted explanation on 18.9.2000, and that even before waiting for any action thereon, present Writ Petition is filed suppressing the facts. He further submits that when application for building permission is rejected, a person cannot make any construction. Finally he would urge that when an application is not rejected, the person who makes such application has to wait for thirty days and inform the Cantonment Board giving fifteen days notice in which event only the provisions of Section 181(6) of the Act come into play. Reliance is placed on the decisions of **Ram Narain v. Cantonment Board, Delhi and T.Parathasarathy v. Madhu Sangal.**

The point on which emphasis laid is whether petitioner was entitled to proceed with the construction in accordance with Section 181(6) of the Act. To appreciate this, it is necessary to notice that under Section 179 of the Act, a person intending to erect or re-erect any building shall apply for sanction by giving notice of his intention. Such notice shall only be treated as valid provided the person issuing notice furnishes the information as required under Section 179 of the Act and any further information and plan, which may be required under the byelaws made under the Act. Section 181(1) of the Act is to the effect that the Cantonment Board may either refuse to sanction the erection or re-erection or may sanction erection subject to such directions with regard to free passage to be left infront of the building, the space to be left about the building to secure free circulation of air and facilitate scavenging and prevention of fire, ventilation of the building, provision and position of drains, latrines, urinals and the like. Subsection (2) of Section 181 of the Act, saves the power of the Board to refuse sanction for erection of a building on any ground or as per subsection 4 of Section 181 of the Act, when the building is proposed to be constructed on the land held on lease from the government or the land, which is entrusted by the Central Government to the Board. Under subsection (5) of Section 181 of the Act, the Board has to communicate the decision to refuse the sanction for erection of a building with reasons for such refusal. Subsection (6) of Section 181 of the Act contains a

deeming provision and it reads as under.

> (6) Where the Board neglects or omits, for one month after the receipt of a valid notice, to make and to deliver to the person who has given the notice any order of any nature specified in this section, and such person thereafter by a written communication sent by registered post to the Board calls the attention of the Board to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be, unconditionally:
>
> Provided that, in any case to which the provisions of sub-section (3) apply, the period of one month herein specified shall be reckoned from the date on which the Board has received the report referred to in that sub-section.

A deeming provision creates a fiction and any provision creating a fiction has to be interpreted strictly. Subsection (6) of Section 181 of the Act requires two conditions to exist for a deemed sanction to come into effect unconditionally. The first one is that the Board must neglect or omit for one month after the receipt of notice (under Section 179 of the Act) to issue an order and secondly, a person who applies for permission after one month should send a written communication calling the attention of the Board to the neglect or omission and even thereafter such neglect or omission continues for a period of fifteen days, permission shall be deemed to have been given. Merely on the expiry of one month from the date of receipt of the valid notice, if the Board fails to pass an order deeming provision shall not come into force. It is only after the expiry of fifteen days if a person issued written notice after waiting for one month, such person can avail the benefit under Section 181 (6) of the Act. In **Ram Narain v Cantonment Board, Delhi** (supra), Delhi High Court considered this aspect of the matter. After referring to Sections 179, 180 and 181 of the Act, it was laid down as under.

> That being so the Board was deemed to have given sanction to the erection of the cinema house in terms of sub-section (6) of Section 181. The Legislature in sub-section (6) of Section 181 has designedly used the words “deemed to have given sanction” if the neglect or omission continues for a further period of 15 days from the date on which the attention of the Board is invited in writing to the neglect/omission committed by the Board for not making an order within one month of the receipt of notice from a party intimating his intention to erect or re-erect a building. Since the words used in sub-section (6) of Section 181 are “deemed to have given sanction” there is no option but to carry the deeming provision of the law to its logical conclusion and hold that in the absence of any orders passed by the Board rejecting the application within the statutory period, the sanction stood granted by operation of law as is implicit in the language of sub-section (6) of Section 181. This view finds support from the cases already noted above.

In **T.Parthasarathy v Madhu Sangal** (supra), Madhya Pradesh High Court

reiterated that the Cantonment Board is deemed to have sanctioned the building permission unconditionally only when there is a neglect or omission for a further period of fifteen days from the date of communication from the applicant calling the attention of the Board to such omission or neglect.

In this case, no material is placed before this Court by the petitioner that he sent a notice after waiting for one month to claim the benefit under Section 181 (6) of the Act. Indeed, it is his case that he sent an application on 15.7.1992 and the same was returned by the respondents on 19.9.1992. When the same was returned and in the absence of any communication calling the attention of the Board to the alleged omission or neglect, the petitioner cannot claim that the Board is deemed to have sanctioned the building permission. Therefore, the construction made by the petitioner, even after the application was returned, is illegal and unauthorized.

The cantonment board issued notice under Section 185(1) of the Act on 25.2.1993 to stop construction. This is not denied. Indeed, the petitioner states that as the building permission is deemed to have been approved, the petitioner ignored the notice under Section 185(1) of the Act. However, the cantonment board could not take further action as the layout, in which the petitioners' house sites were situated, was the subject matter of a writ petition before this Court in W.P.No.18389 of 1989. The same was ultimately dismissed 08.10.1999 and immediately thereafter the respondent issued the notice under Section 256 of the Act on 31.8.2000. In this factual background, it would not be possible to accept the submission of the learned Counsel for the petitioners that the proposed demolition is beyond twelve months.

The writ petition is devoid of any merit and is accordingly dismissed with costs.

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(V.V.S.RAO, J)

13.2.2006

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Note: L.R.Copy to be marked.

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